

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KEYHERRA GREEN,

Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, *et. al*,

Defendants.

Case No. 2:20-cv-00769-KJD-DJA

**ORDER GRANTING IN PART  
DEFENDANTS' MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Before the Court is Defendants' Motion for Judgment on the Pleadings (ECF #54). Plaintiff responded in opposition (ECF #56) and Defendants replied (ECF #57).

I. Factual and Procedural Background

Plaintiff Keyherra Green ("Green") filed this action against Defendants Las Vegas Metropolitan Police Department ("LVMPD"), the Clark County Detention Center ("CCDC"), Officer Fred Merrick ("Officer Merrick"), and Officer Lora Cody ("Officer Cody") after she was arrested for a murder she did not commit.<sup>1</sup> (ECF #39, at 3–6). After being detained for 72 days, Green now brings ten causes of action: six 42 U.S.C. § 1983 claims for violation of the Fourth Amendment particularity requirement, wrongful incarceration in violation of the Fourteenth Amendment, unreasonable search and seizure, substantive due process violations, and municipal liability for unconstitutional custom or policy; a federal claim for disability discrimination; a false arrest/imprisonment claim under Nevada state law; a negligence claim; and a malicious prosecution claim. *Id.* at 14–27. Plaintiff dismissed the fifth cause of action for denial of medical care. (ECF #49).

On January 22, 2018, the daughter of a man named Ghasem Aliaskari ("Aliaskari")

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<sup>1</sup> The defendants named in the complaint who were dismissed pursuant to ECF #49 are not listed here.

1 requested that LVMPD perform a welfare check at Aliaskari's house. Id. at 6. On January 23,  
2 2018, LVMPD officer Danial Stopka ("Officer Stopka")<sup>2</sup> arrived at Aliaskari's residence. Id.  
3 Officer Stopka spoke with Keara Jean Green ("Keara Green"), who claimed to rent a room from  
4 Aliaskari. Id. Officer Stopka's body camera recorded his interaction with Keara Green. Id.

5 On or about March 8, 2018, Officer Merrick and Officer Cody discovered Aliaskari's  
6 body at his house and began an investigation into his death. Id. at 7. The investigation showed  
7 evidence that Keara Green lived with Aliaskari. Id. Officer Cody spoke with a witness who had  
8 purchased Aliaskari's car after his death. Id. at 7. The witness told Officer Cody that he  
9 purchased the car from a man who was accompanied by a "black female." Id. He identified a  
10 photo of Keara Green as the black female involved with the sale of Aliaskari's car. Id. An  
11 interview with Aliaskari's renter, Diana Sorrils ("Sorrils"), revealed that she rented a room while  
12 "a black female that she knows as Keyharra was staying in a room with [Aliaskari]." Id. at 9.  
13 Sorrils indicated that she had not seen Aliaskari since January 22, 2018, but Keyharra had been  
14 staying in Aliaskari's room. Id. The officers then sought Keara Green, with whom they had  
15 spoken at the original welfare check. Id. at 8. The similarity in names led to Plaintiff Keyhera  
16 Green being arrested by Los Angeles Police Department officers on March 27, 2018. Id. at 9.

17 Plaintiff was detained in California from March 27, 2018 to May 27, 2018. (ECF #54, at  
18 5). While in custody in California, Plaintiff waived her right to require the issuance and service  
19 of a warrant of extradition to Las Vegas. Id. She elected to return to Las Vegas without  
20 requisition papers or other legal forms of process after a magistrate judge informed her of her  
21 right to require the issuance and service of a warrant of extradition. Id. Plaintiff was brought  
22 before a Nevada Justice Court judge on May 27, 2018 and was sent to detention at CCDC. (ECF  
23 #39, at 10).

24 A public defender was assigned to represent Plaintiff on May 31, 2018. Id. at 11. Plaintiff  
25 told her attorney that she had not committed the murder. Id. The attorney subpoenaed  
26 information from LVMPD to prove that Plaintiff was not guilty. Id. The subpoenaed documents  
27 revealed Keara Green's employment records and her daughter's birth certificate; however,

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28 <sup>2</sup> Officer Stopka is not a defendant in this action.

1 Plaintiff had no children and was not from Texas, where the identifying information indicated  
 2 Keara Green was from. Id. The subpoenaed information also revealed a photograph of Keara  
 3 Green, showing that Keara Green had short hair and a gap in her teeth that Plaintiff did not have.  
 4 Id. Based on the information, it was evident that Plaintiff was not the person present at the  
 5 original welfare check of Aliaskari's home that LVMPD officers sought. Id. Plaintiff's attorney  
 6 notified the Clark County District Attorney of the wrong arrest and later notified Defendants on  
 7 June 6, 2018 that Plaintiff was the wrong suspect. Id. Plaintiff was released from CCDC on June  
 8 7, 2018. Id. On August 7, 2018, Metro arrested Keara Green who subsequently confessed to  
 9 Aliaskari's murder. Id.

10 Plaintiff brought this action on April 28, 2020 and faxed a copy of the complaint to  
 11 LVMPD on April 30, 2020. (ECF #54, at 5). Plaintiff then filed her First Amended Complaint on  
 12 July 22, 2020 (ECF #15), and her Second Amended Complaint on January 8, 2021 (ECF #39).  
 13 The complaint alleges that Defendants violated her rights by failing to verify the identity of the  
 14 black female suspect from the body camera footage, filing a defective arrest affidavit, and  
 15 detaining Green when they knew or should have known that she was not the Keara Green who  
 16 lived with Aliaskari. Id. at 6–14.

## 17 II. Legal Standard

18 After the pleadings are closed—but early enough not to delay trial—a party may move  
 19 for judgment on the pleadings. FED. R. CIV. P. 12(c). Motions for judgment on the pleadings  
 20 pursuant to Federal Rule of Civil Procedure 12(c) are “functionally identical” to a Federal Rule  
 21 of Civil Procedure 12(b)(6) motion to dismiss for failure to state a claim. Dworkin v. Hustler  
 22 Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989).

23 In reviewing a motion for judgment on the pleadings, the court “must accept all factual  
 24 allegations in the complaint as true and construe them in the light most favorable to the non-  
 25 moving party.” Fleming v. Pickard, 581 F.3d 922, 925 (9th Cir. 2009). “[J]udgment on the  
 26 pleadings is proper when taking all the allegations in the non-moving party's pleadings as true,  
 27 the moving party is entitled to judgment as a matter of law.” Ventress v. Japan Airlines, 486 F.3d  
 28 1111, 1114 (9th Cir. 2007) (citations omitted).

1           III.     Analysis

2           Defendants argue that Green’s § 1983 claims for unreasonable search and seizure,  
3 substantive due process claims, and Monell claim are untimely. Because this is a statute of  
4 limitations issue, the Court notes the important dates:

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- 6           • March 27, 2018: Plaintiff is arrested
  - 7           • April 2, 2018: Plaintiff signs a waiver of extradition
  - 8           • May 27, 2018: Plaintiff is extradited to Las Vegas
  - 9           • June 7, 2018: Plaintiff is released from custody
  - 10          • August 7, 2018: Keara is arrested by LVMPD officers and confesses to the murder
  - 11          • August 8, 2018: District Attorney dismisses the case against Plaintiff
  - 12          • April 28, 2020: Plaintiff files her lawsuit
  - 13          • April 30, 2020: Plaintiff faxes a copy of the complaint to LVMPD
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15                   A.   Applicable Statute of Limitations

16           Section 1983 “does not contain its own statute of limitations.” Butler v. Nat’l Cmty.  
17 Renaissance of Cal., 766 F.3d 1191, 1198 (9th Cir. 2014). As such, federal courts “apply the  
18 forum state’s statute of limitations for personal injury actions, along with the forum state’s law  
19 regarding tolling, including equitable tolling, except to the extent any of these laws is  
20 inconsistent with federal law.” Id. (internal quotations and citations omitted). Nevada statute  
21 creates a two-year statute of limitations on personal injury actions. NEV. REV. STAT.  
22 11.190(4)(2). Therefore, Plaintiff’s § 1983 claims carry a two-year statute of limitations. “It is a  
23 question of federal law, however, as to when the statute of limitations begins to run on a claim.”  
24 Reese v. Clark Cnty. Det. Center, No. 2:15-cv-01633-GMN-VCF, 2018 WL 4494088, at \*4 (D.  
25 Nev. Sep. 18, 2018). “Under federal law, a claim accrues when the plaintiff knows or has reason  
26 to know of the injury which is the basis of the action.” TwoRivers v. Lewis, 174 F.3d 987, 991  
27 (9th Cir. 1999).

28           Defendants argue that Green knew of the injury, which is the basis of both her illegal

1 search and seizure action as well as her substantive due process action, the moment she was  
 2 improperly arrested on March 27, 2018. Defendants also argue that Green reasonably would  
 3 have known that LVMPD's policies and customs resulted in her improper arrest at the time she  
 4 was arrested. Defendants make the same argument regarding Green's state law claims for false  
 5 arrest and negligence; that Green was aware of the wrongful conduct as soon as she was arrested,  
 6 but did not bring the action within two years.<sup>3</sup> According to Defendants, these claims should be  
 7 dismissed as untimely. Defendants admit that Green's malicious prosecution claim is timely.

8 Green's response argues that Defendants applied the wrong statute of limitations.  
 9 According to Green, her causes of action are Devereaux claims, and the statute of limitations  
 10 does not begin to run until the date of termination of the criminal proceedings. "A Devereaux  
 11 claim is a claim that the government violated the plaintiff's due process rights by subjecting the  
 12 plaintiff to criminal charges based on deliberately-fabricated evidence." Bradford v.  
 13 Scherschlight, 803 F.3d 382, 386 (9th Cir. 2015). There are two methods of proving that a  
 14 fabrication of evidence was deliberate. "The first method is to demonstrate that the defendant  
 15 continued his investigation of the plaintiff even though he knew or should have known that the  
 16 plaintiff was innocent." Id. "The second method is to demonstrate that the defendant used  
 17 'investigative techniques that were so coercive and abusive that [he] knew or should have known  
 18 that those techniques would yield false information.'" Id. (quoting Devereaux, 263 F.3d at 1076).

#### 19 B. Devereaux Claims

20 The Court acknowledges the difference in accrual dates between Devereaux and non-  
 21 Devereaux claims. The Ninth Circuit has found that "[s]etting the accrual date for [a] Devereaux  
 22 claim as the date of acquittal is logical." Bradford, 803 F.3d at 388. For false arrest claims, "the  
 23 statute of limitations begins to run 'as soon as the allegedly wrongful arrest occurred, subjecting  
 24 him to the harm of the involuntary detention.'" Ritter v. Marshowski, No. 3:12-cv-00194-LRH-  
 25 WGC, 2015 WL 795077, at \*4 (D. Nev. Feb. 25, 2015) (quoting Wallace v. Kato, 549 U.S. 384,  
 26 388 (2007)). "As for a false imprisonment claim brought under section 1983, the Supreme Court

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27  
 28 <sup>3</sup> While the two-year statute of limitations is the same for these state claims, the limitations period arises from  
 a different statute than the § 1983 claims. NEV. REV. STAT. 41.036(2).

1 held that the statute of limitations begins to run ‘when the alleged false imprisonment ends.’” Id.  
2 (quoting Wallace, 549 U.S. at 389). False imprisonment “consists of ‘detention without legal  
3 process’ and as such ‘ends once the victim becomes held pursuant to such process—when, for  
4 example, he is bound over by a magistrate or arraigned on charges.’” Id. (quoting Wallace, 549  
5 U.S. at 388). Green’s complaint does not sufficiently allege a Devereaux claim. There are some  
6 allegations that LVMPD officers continued their investigation of Green when they knew or  
7 should have known that she was innocent, but the causes of action do not assert a Devereaux  
8 claim. As such, the two-year statute of limitations is applicable to Green’s § 1983 claims.

9 The statute of limitations for Green’s Fourth Amendment and false arrest claims (first  
10 and third causes of action) began to run when the arrest took place on March 27, 2018. The  
11 statute of limitations on Green’s wrongful incarceration claim (second cause of action) began  
12 when she appeared in front of the magistrate and signed the waiver of extradition on April 2,  
13 2018. Green did not file this action until April 28, 2020, more than two years after the claims  
14 accrued. Therefore, these causes of action are dismissed.

15 While Green’s fourth cause of action is labeled as a 14th Amendment Due Process claim,  
16 the Court sees it as a Fourth Amendment claim. Green alleges that Defendants violated her  
17 substantive due process right “to be free from state actions that deprive her of life, liberty, or  
18 property.” (ECF #15, at 17). The right against deprivation of liberty is more clearly enumerated  
19 in the Fourth Amendment. “Where a particular Amendment ‘provides an explicit textual source  
20 of constitutional protection’ against a particular sort of government behavior, ‘that Amendment,  
21 not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing  
22 these claims.’” Albright, 510 U.S. at 273 (quoting Graham v. Connor, 490 U.S. 386, 395 (1989)).  
23 As such, Plaintiff’s fourth cause of action is also a Fourth Amendment claim that carries a two-  
24 year statute of limitations that accrued on March 27, 2018 when Green was arrested. Because it  
25 was not filed until April 28, 2020, it is untimely and is dismissed.

26 Green’s state law claims (eighth and ninth causes of action) are also untimely. Under  
27 Nevada law, “[e]ach person who has a claim against any political subdivision of the State arising  
28 out of a tort must file the claim within two years after the time the cause of action accrues with

1 the governing body of that political subdivision.” NEV. REV. STAT. § 41.036(2). Green was aware  
 2 of the false arrest and negligence when she was arrested and waived her right to extradition on  
 3 April 2, 2018. She did not file the claims until April 28, 2020, more than two years later.

4 Therefore, the state law claims are dismissed.

5 Plaintiff’s sixth cause of action is not time barred. It is a claim that LVMPD should be  
 6 liable for its unconstitutional customs or policies. Green argues that LVMPD had policies and  
 7 customs in place that amounted to deliberate indifference of her constitutional rights. Defendants  
 8 have not made it clear that Green knew or should have known of LVMPD’s customs and policies  
 9 at the time of her arrest. Because the complaint is read in the light most favorable to Green, the  
 10 Court finds that Defendants have not met their burden to show that this cause of action was  
 11 untimely.

12 Therefore, Green’s first, second, third, fourth, eighth, and ninth causes of action are  
 13 untimely. Defendants have not shown that Green’s sixth cause of action is time barred.  
 14 Defendants’ motion did not argue that Green’s seventh cause of action for disability  
 15 discrimination was time barred and admitted that Green’s tenth cause of action for malicious  
 16 prosecution was timely. As such, Green’s sixth, seventh, and tenth causes of action may proceed.

#### 17 C. Equitable Tolling

18 In determining whether a statute of limitations should be tolled, courts consider multiple  
 19 factors, including

20  
 21 the diligence of the claimant; the claimant’s knowledge of the relevant facts; the  
 22 claimant’s reliance on authoritative statements by the administrative agency that  
 23 misled the claimant about the nature of the claimant’s rights; any deception or false  
 24 assurances on the part of the [defendant] against whom the claim is made; the  
 25 prejudice to the [defendant] that would actually result from delay during the time  
 26 that the limitations period is tolled; and any other equitable considerations  
 27 appropriate in the particular case.

26 Seino v. Employers Ins. Co. of Nevada, 111 P.3d 1107, 1112 (Nev. 2005). The Nevada Supreme  
 27 Court has stated that “plaintiffs seeking equitable tolling must ‘demonstrate that, despite their  
 28 exercise of diligence, extraordinary circumstances beyond their control prevented them from

timely filing their claims.” Salloum v. Boyd Gaming Corp., 495 P.3d 513, 518 (Nev. 2021) (quoting Fausto v. Sanchez-Flores, 482 P.3d 677, 681 (Nev. 2021)). Green argues that equitable tolling should apply because she was incarcerated and could not file a lawsuit until she was released. However, not only do inmates have access to the courts while detained, but Green was released from detention on June 7, 2018, leaving her approximately 22 months to timely file her action. After considering the relevant factors, the Court finds that Green has not shown that extraordinary circumstances beyond her control prevented her from timely filing her claims. As such, equitable tolling is improper.

#### D. Amendment

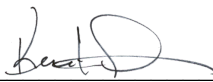
Defendants state that “[i]f Green intends to condense all of the false arrest claims into a Deveraux claim, then the Court should nonetheless order her to amend her complaint so it provides ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” (ECF #57, at 8 (quoting FED. R. CIV. P. 8(a)(2))). The Court agrees. Plaintiff’s response to the motion indicates that Green intends to pursue a Deveraux claim for the conduct that led to her false arrest. Therefore, she must file an amended complaint that satisfies the requirements of Iqbal and Twombly within 21 days of this order or abandon her Deveraux claim.

#### IV. Conclusion

Accordingly, IT IS HEREBY ORDERED that Defendants’ Motion for Judgment on the Pleadings (ECF #54) is **GRANTED in part**.

IT IS FURTHER ORDERED that Plaintiff’s first, second, third, fourth, eighth, and ninth causes of action are **DISMISSED as time barred**. Plaintiff has 21 days from the date of this order to amend and more definitely allege a Deveraux claim.

Dated this 23rd day of March, 2022.

  
 Kent J. Dawson  
 United States District Judge